

## Internal Revenue Service

Number: **201117006**  
Release Date: 4/29/2011  
Index Number: 1441.02-00

Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:INTL:BR2  
PLR-129635-10

Date:  
January 18, 2011

### Legend

X =  
Date 1 =  
XSub =  
State =  
Date 2 =

Dear :

This is in response to your request dated July 15, 2010, submitted on behalf of X by X's authorized representative, requesting a ruling under section 1441 of the Internal Revenue Code.

### FACTS

X, a domestic corporation, is the common parent of an affiliated group of corporations (the "Group") that joins together in the filing of a U.S. consolidated Federal income tax return. On Date 1, X and XSub, one of X's subsidiaries (together with X, the "Debtors"), commenced voluntary cases under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of State.

On Date 2, the Debtors filed a proposed plan of reorganization under chapter 11 of the Bankruptcy Code (the "Plan"), premised on the Bankruptcy Court's approval of a global settlement agreement between the Debtors and other interested parties. Under the terms of this agreement, X and other interested parties will jointly direct all tax authorities to pay certain anticipated tax refunds of the Group (and stated interest) to a master escrow account. The funds in this master escrow account will eventually be released to separate escrow accounts for X and other interested parties. For Federal income tax purposes, X will be deemed to own the assets of its separate escrow account and must include in income any income generated by the assets in such

escrow account. The timing and amount of the funds to be released is uncertain because it depends, in part, on the receipt of all tax refunds and the final settlement of tax liabilities.

Under the Plan, a trust will be established for the sole purpose of liquidating the assets of the Debtors and distributing the resulting proceeds to creditors on account of their claims against the Debtors, with creditors receiving beneficial interests in the trust. The trust intends to qualify as a liquidating trust for Federal income tax purposes, which will be treated as a grantor trust with the holders of trust interests (initially, the creditors) treated as the owners and grantors of the trust. See Rev. Proc. 94-45, 1994-2 C.B. 684. The trustee of the trust will be a U.S. citizen and the trust agreement will provide that the trust will be administered and governed in all respects exclusively within the United States.

The trust will receive X's interest in, and be the beneficiary of, X's separate escrow account. Thus, the trust interests represent the ownership interests in the underlying refund claims, and a holder of trust interests will be deemed to own its pro rata share of each of the refund claims held through the trust.

X represents that consistent with the Plan and Rev. Proc. 94-45, the refund claims transferred to the trust will be treated for Federal income tax purposes as having been first transferred, at their fair market value, directly to holders of claims in satisfaction of such claims, followed by the transfer of such assets by the holders to the trust in exchange for trust interests. X expects that it and the trust will receive certain of the tax refunds at a discount to their face amount (i.e., fair market value basis is expected to be less than the face amount of the tax refunds) because of the uncertainty in the timing and the amount of the tax refunds.

In addition, X expects that if the trust interests are tradable on a secondary market, the trust interests will also trade at a discount relative to the face amount of the underlying claims. X expects that when the trust interests are traded at a discount, the adjusted basis at which the trust will hold a corresponding portion of the refund claims will reflect an adjusted discount level (i.e., the basis will reflect the current trading price). The receipt of tax refunds by the trust will result in income equal to the difference, if any, between the basis in the trust interests and the underlying amount of the tax refund received on the trust interests. Thus, when the tax refund proceeds are received by the trust, X expects that the holders of trust interests will recognize income.

X expects that a significant portion of holders of trust interests will be non-U.S. persons, and that if the trust interests are tradable, a significant portion of the buyers could be non-U.S. persons.

**RULINGS REQUESTED**

You have requested the following two rulings:

1. Stated interest earned on the tax refund claims qualifies as “interest” for Federal income tax purposes.
2. Gain from the collection of tax refunds and any distribution by the trust of cash related to such gain is not subject to withholding under Treas. Reg. § 1.1441-2(b)(2)(i).

## LAW & ANALYSIS

Section 61(a)(4) of the Internal Revenue Code provides that gross income means all income from whatever sourced derived, including interest.

Section 1.61-7(a) of the Income Tax Regulations provides that, as a general rule, interest received by or credited to the taxpayer constitutes gross income and is fully taxable. Furthermore, interest income includes interest on refunds of Federal taxes.

Section 6611(a) provides that interest shall be allowed and paid upon any overpayment in respect of any internal revenue tax.

Section 1001(a) provides that the gain from the sale or other disposition of property is the excess of the amount realized over the adjusted basis of such property.

Section 1.1441-2(b)(2)(i) provides that gains derived from the sale of property (including market discount and option premiums) are not subject to withholding.

Under section 6611(a), X is entitled to interest on its refunds due to overpayments of tax. Such interest falls under Treas. Reg. section 1.61-7 as taxable interest for Federal income tax purposes. Similarly, interest on state tax refunds is taxable as interest for Federal income tax purposes. Therefore, under these facts, interest on the tax refund claims will be “interest” for Federal income tax purposes.

The trust will likely hold the tax refund claims at a discount. Therefore, when the trust receives the tax refund proceeds in excess of the fair market value of the trust interests, the holders of trust interests will recognize gain. Under section 1001(a), such gain should be measured by the difference between the amount a trust interest holder receives from the tax refunds and the holder’s basis in its trust interest. However, under Treas. Reg. § 1.1441-2(b)(2)(i), gain that arises on the collection of a tax refund, and distributions of related cash by the trust, is not subject to withholding.

## RULINGS

1. Stated interest earned on the tax refund claims while the claims are held by the trust qualifies as “interest” for Federal income tax purposes.

2. Gain from the collection of tax refunds and any distribution by the trust of cash related to such gain is not subject to withholding under Treas. Reg. § 1.1441-2(b)(2)(i).

#### Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed regarding the tax treatment of any income generated by a subsequent disposition of the trust certificates by the creditors to any subsequent trust certificate holders.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Jeffery G. Mitchell  
Chief, Branch 2  
(International)